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Supreme Court, U.S.
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DOCKET NO. _____

IN THE SUPREME COURT
OF THE
UNITED STATES

FREDERICK G. JENSEN,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT,

In The Matter Of

A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Frederick G. Jensen
Pro se
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QUESTIONS PRESENTED

1. Does the theory of constitutional foundation that government is for people of fundamentally differing views sweep so broadly as to permit the doctor who refuses to do any abortions, to refuse to assist where complications rise in his colleague's cases? Or, is justice equal for all? Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705 (1973), (Pp. 117, 709 in the reporters, respectively).

2. Does petitioner have a right to be heard based on the law that abortion on demand is an act, mala in se, and a great and Heinous misdemeanor under the common law? (Pp. 120, 709)

3. Can it be asserted American statutes are not derived from the common law--specifically abortion statutes--supportable in historical fact and law: (Pp. 129, 715).

4. Is the question of life one of fact for a jury? (Pp. 131, 716).

5. Does the archaic "quick with child" equate with the more modern "in family way"? Or, is "quick" a legal term referring to pregnancy in the 3rd, 4th, and up to the end of the 5th month? (Footnote 20, Pp. 132, 716).

6. Can the early American common law cases on abortions, pro and con, be reconciled? (Footnote 27, Pp. 135, 718).

7. Did Lord Ellenborough's Statute, 43 Geo. III, c. 58 (1803), the anti-abortion law, replace 21 Jac. I, c. 27 (1623), which made it a felony to conceal the birth of a child afterward found dead? (Pp. 136, 718).

8. Allowing abortion was viewed with more or less disfavor according to the times, is it possible

to restate that fact by asserting there is now a certain right to abort? (Pp. 140, 720).

9. May a government policy decision to risk maternal health, scientifically based on a comparison of the statistics--the death rate for deliveries with the death rate for abortions--be advocated by the Supreme Court? (Pp. 149, 725).

10. Have the courts held the female's right of privacy to fail, under the right of the unborn to life? (Pp. 152, 726).

11. Is the right to destroy the unborn any part of either the legal marriage contract or the marriage in common law? (Pp. 153, 727).

12. Does the inalienable right to life, health, and safety arise ab initio by reason of the state's

interest? (Pp. 154, 727 and 159, 729, 730).

13. Is the custom of contemplating the unborn as if a person living, in certain cases, a mere legal fiction? (Pp. 162, 731 and 163, 164, 732).

14. May a retired seaman appear pro se under Title 28, Section 1916? May he complain to preserve his earned pension payments as against the government?

15. Does a taxpayer, whether a merchant seaman or not, have the right to relief by mandamus, injunction, and/or declaratory judgment under Title 26, Section 6334 (d) (1) and (2) against seizure by the Internal Revenue Service?

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Docket No. _____

IN THE SUPREME COURT
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Frederick G. Jensen,
petitioner,

v.

UNITED STATES OF AMERICA,
respondent,

In the Matter of

A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

OPINION BELOW

Petitioner before the United States Supreme Court, October Term, is Frederick G. Jensen, appellant in Jensen v. United States, No. 85-1504, in the U. S. Court of Appeals for the Fourth Circuit, on a judgment of frivolity when income was declared but taxes not self-assessed and voluntarily paid, decided 25 June 1986, and its order of 28 July 1986 approving appellant's amended

petition for rehearing of July 7th, together with its order denying the original petition for a rehearing of 5 July 1986;

JURISDICTION

And, to permit petitioner to apply for the Court's Writ of Certiorari under Title 28, Section 1254 (1),

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon petition of any party to any civil...case, ...after rendition of judgment or decree:

and Section 2101 (c),

> ...any writ of certiorari intended to bring any judgment or decree in a civil action, ...before the Supreme Court for review shall be ...applied for within ninety days after the entry of such judgment or decree.

FEDERAL RULES INVOLVED

And, under Rules 17 (a) and 18, Rules of the Supreme Court.

STATEMENT OF THE CASE

This case was thrown out of the

Court of Appeals Fourth Circuit as a tax protestor's case. It was not heard on its merits--the right of the unborn to protection under the Fifth Amendment, U. S. Constitution. No taxpayer, citizen, or civilized human being resident in a land under law is bound to acquiese mindlessly to this current slaughter of the innocent.

STATEMENT OF FACTS

Petitioner refused to pay any tax to government from 1978 onward, no more no less, so that his right to complain in court about his unwilling participation in the national destruction under alleged law of the unborn might not be mooted thereby. Taxes credited paid and/or refunded to him from time to time were derived from withholding payments made by his employer, seizure by the I.R.S., and payment under protest. Just how these sums are allocated to

interest, penalties, taxes, fines, and refunds is not known to petitioner. The request for receipts was never complied with. See Title 26, Section 6313 of the I.R.C.

REASONS FOR GRANTING WRIT

Petitioner is characterized and perhaps stereotyped by the courts below as "empty head white heart" and a "breed who confuses the courts with a soap box at Hyde Park Corner." In fact, petitioner believes he is a sovereign citizen in a free country. He is surely not the subject of any King. He is no man's subject. Thus, he believes he has the right and duty under law to use all means he has to redress the wrong he endures as a citizen of a nation that terminates by law the lives of the innocent unborn guilty of no fault under law. Since it was the Supreme Court that apparently made abortion on demand possible by its

decision in a certain case, it stands to reason the national interest is most quickly, completely, and painlessly served where the court hears cases like this one, presenting an opportunity to clarify and/or develop its reasoning.

The complaint in this case reaches to the Supreme Court's decision in Roe v. Wade, cited above, recently held stare decisis. It is unusual and covered partly by Rule 17 (a). Since the right to review a decision of the Supreme Court was not addressed by either of the courts below in holding this suit frivolous, the Court surely has jurisdiction of a real question. Rule 18 may apply because failure to decide promptly may result in many more fetal deaths, who will not be heard in any court on earth.

Petitioner's standing is covered

by questions 14 and 15, above, and 14 and 15 below in the arguments.

Rule 21.5 states:

> The failure of petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying his petition.

Therefore, petitioner prays for an oral hearing.

ARGUMENT

1. The theory of constitutional foundation that government is for people of fundamentally differing views does not explain the maxim, the law is the same for all. (Pp. 117, 709 as reported, respectively). The ethic underpinning medical abortion cannot be polarized fairly. A doctor urging medical necessity in defense of a charge of doing an abortion criminally, assumes the burden of proof. What defense has he if the abortion was done on demand?

Some of the problem was before the Court in Simopoulos v. Virginia, 76 L. Ed. 755, 103 S. Ct.--(1983), No. 81-185.

2. The Court granted Roe standing because the claim was said to be constitutional on its face. Petitioner's distress confers standing on clearer ground, that abortion is mala in se, a great and heinous misdemeanor in common law, by ancient authority. (Pp. 120, 709).

3. The operation of the common law in America was intimately involved with abortion statutes. In case Hunter v. Wheate, 289 F 604, 607 (1923), the court invoked the "clean hands" rule against both parties, where there was a plea and a cross-plea in a suit over fees and care after an abortion performed. (Pp. 129, 715).

4. The Virginia Code 32.1-249, 264 defines fetal death for statis-

tical purposes. Questions like, Is a heartbeat present? Are there brainwaves? Do movements of flexion and extension appear? Does the umbilical cord pulsate? are questions of fact for a jury. (Pp. 131, 716).

5. The Court's reliance on Dorland's Illustrated Medical Dictionary for the meaning of "quick" is misplaced. The Oxford English Dictionary states:

> 4. Const. with a. Quick with child, said of a female in the stage of pregnancy at which the motion of the foetus is felt. Now rare or obs. 1774 Goldsm. Nat. Hist. (1776) II. 43 Women... quick with child, as their expression is, at the end of two months.

No legal definition is found among the 29 offered. (Footnote 20, Pp. 132, 716).

6. The holding of Commonwealth v. Bangs, 9 Mass. 387, 388 in (1812) that,

> ...the averment that the woman was quick with child...is a

necessary part of the indictment (for abortion)...

can be reconciled with Chitty's 4 count indictment for abortion in 1799 (and one for assault and battery) in 3 Chitty, Crim. Law, p. 798. (Note 27, Pp. 135, 718). See also footnote (a), Bangs. See Mills v. Commonwealth, 13 Pa. 631 (1850) for a complete statement of common law abortion in America.

Assault and battery do not amount to abortion and abortion need not involve an assault with battery. To confuse the two is to abort process.

7. The legal status in earlier times of what we now call abortion must be evaluated in the light of the fact that 21 Jac. I, c. 27 (1623) was repealed in England upon the enactment of 43 Geo. III, c. 58 (1803). The former dealt with women who murdered their babies to conceal the birth, the

latter with what we call abortion. In colonial times a servant girl under indenture had to work an extra year when she gave birth to an illegitimate child, i.e., the social context to which young girls had to conform was different than later. There is no evidence that women were murdering their babies at a time when abortion was a widespread practice. (Pp. 136, 718).

8. This question is important because it pinpoints the logical non sequitur that concludes the wide-ranging historical analysis of abortion made in Roe, which is offered as support for its constitutional-on-the-face view of abortion. (Pp. 140, 720).

9. If one can admit the Court does not initiate government policy, nor was any such policy in question in Roe, then one may be able to acknowledge that its interpretation of these

statistics is faulty. Women, who have available both contraceptives and abortions, may have the same intent in using either or both, i.e., to avoid pregnancy both before or after the fact. They may then have several abortions in any nine months, danger ignored. (Pp. 149, 725).

10. Courts have related the right of female privacy to the right of the unborn to life under common law from Union Pacific v. Botsford, 141 U.S. 250, 11 S. Ct. 1,000, 35 L. Ed. 734 (1891), (Pp. 152, 726) back to ancient times in the Eyre of Northhamptonshire, 1329-30: 3-4 Edward III, Vol. 1, Selden Society, London, 1983, p. 179, (From Ot. Coll. Ln.). Women condemned to death were not executed if they were pregnant. The court's power to examine the woman existed under the writ de ventre inspiciendo. Nor have courts put to death the unborn of condemned mothers within

the memory of men living. (Pp. 152, 726).

11. The pregnant woman viewing life in terms of better or worse; richer or poorer; in sickness and health; (Pp. 153, 727) and possibly in terms of the legal stigma attaching to bastardy and unwed maternity possesses no fundamental right of privacy allowing destruction of the conceptus under the laws of statutory marriage, or the rules of common law marriage. No such right is any part of the marriage contract, commonly.

12. The right to life of the gestating unborn is not dependent from or conditioned upon the state's interest. Where life exists it is ipso facto, inalienable: Jefferson, Declaration of Independence. (Pp. 154, 727). Nor does the 14th Amendment have anything to do with it, but the 5th Amendment does, whose roots, scholars say, go

back to the original tax protestors at Runymede in 1215. (Pp. 159, 729, 730).

13. The custom of contemplating the unborn as living persons for the purpose of determining rights or interests gotten by inheritance, or for other devolution of property, is a legal fiction. Neither birth nor viability make workable limits, today, upon which the inalienable right rests. (Pp. 162, 731; Pp. 163, 164, 732). It is no great mystery that rights are equal but persons are not, usually. Today, that the unborn have rights means that all others are bound to respect the unborn, as their condition of life requires.

14. Petitioner is a retired seaman (holding the 9th issue of his master's license and discharges from over 100 U. S. merchant ships from 1938 to 1982), whose prayer the United States Supreme Court may hear under Title 28, Section 1916:

> In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages...or the enforcement of laws for their health or safety...

Pro se and "in their own names" have the same meaning in so many words and should be taken to mean what they say.

See Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982) where the Court broadly interpreted a seaman's right to wages, health, and safety under 46 U.S.C., Section 596. Whether it extends to government as the employer of seamen and covers pension payable by government may be new questions, but not so different as to indicate denial.

15. In February 1984 Kopsack, Breeden, and Hubbard, attorneys, Steamboat Road, Box 340, Irvington, VA, (804) 438-5522, filed in U.S. District Court, Eastern District of Virginia, Richmond Division, Civil Action No. CA

85-0648-R, complaining, among other things,

> ...9. On January 11, 1984, defendant (United States of America) levied upon plaintiff's (Jensen) bank account with Chesapeake National Bank, Kilmarnock, Virginia, to-wit: Account number 32338447706, and seized the contents thereof in the amount of $1,600.31, which said account contained accumulated social secutiry (sic) payments to plaintiff...

Seizure of the entire contents was contrary to Title 26, Section 6334 (d) (1) and (2), I.R.C.

Petitioner wishes to argue for mandamus, injunctive, or declaratory relief, as the Court may decide, to require the I.R.S. to stay within the law.

CONCLUSION

For the reasons stated herein petitioner prays the Writ of Certiorari to permit his suit to proceed on the merits, 110 pages.

Respectfully submitted,

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August 1986 (804) 438-5222

AFFIDAVIT OF SERVICE

Hereby petitioner swears or affirms that service of this application for a Writ of Certiorari was made on counsel for defendant on this _____ day of August, 1986, by mailing _____ copies thereof in an envelope, with postage prepaid, addressed as follows:
James H. Love, Attorney
Tax Division,
Department of Justice,
P. O. Box 502
Washington, D. C. 20044

Frederick G. Jensen